

determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on December 1, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82-33704 Filed 12-10-82; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

[Airspace Docket No. 82-ASW-81]

### Alteration of Transition Area; San Marcos, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment alters the transition area at San Marcos, TX. On October 7, 1972 a notice of proposed rulemaking (NPRM) was published in the *Federal Register* stating the FAA proposed to alter the transition area at San Marcos, TX. Subsequent to this notice, it has been determined the proposed designated airspace is not adequate for the protection of aircraft executing standard instrument approach procedures (SIAP) using the instrument landing system (ILS) to Runway 12. This amendment will designate the needed airspace for aircraft conducting ILS approaches to the San Marcos Municipal Airport.

**DATES:** Effective January 20, 1983. Comments on the rule must be received before December 27, 1982.

**ADDRESSES:** Send comments on the action in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region; Docket No. 82-ASW-81, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

## SUPPLEMENTARY INFORMATION:

### History

Federal Aviation Regulation Part 71, Subpart G 71.181, as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. On October 7, 1982, a notice of proposed rulemaking (NPRM) was published in the *Federal Register* (47 FR 44342) stating the FAA proposed to alter the transition area at San Marcos, TX. Subsequent to the notice, it has been determined the proposed airspace is not adequate for the protection of aircraft executing a standard instrument approach procedure (SIAP) to Runway 12 at the San Marcos Municipal Airport using the newly installed instrument landing system (ILS). There is insufficient time to amend the transition area by normal public notice and procedure and effect the necessary airspace to accommodate the new ILS approach to be commissioned on January 20, 1983.

### Request for Comments on the Rule

This action is in the form of a final rule which designates the needed airspace for the protection of aircraft executing an SIAP to the San Marcos Municipal Airport using the ILS to Runway 12. Although it was not preceded by notice and public procedure, comments are invited on the rule. The FAA believes the rule is in the best interest of the public because the designated airspace will be effective when the ILS system is commissioned on January 20, 1983, and, therefore, makes the proposed approach immediately available. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that further changes are necessary, appropriate rulemaking proceedings will be initiated to amend the regulation.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR 71) amends the dimensions of the San Marcos, TX, transition area. Because this action will be beneficial and in the best interest of the public, notice and public procedure thereon are unnecessary. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

### List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 G.M.T., January 20, 1983, as follows:

### San Marcos, TX—[Amended]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the San Marcos Municipal Airport (latitude 29°53'36" N., longitude 97°51'52" W.) and within 7.5 miles each side of a 312° bearing of the airport to 24 miles northwest. (Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11/61(c))

**Note.**—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on November 26, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-33708 Filed 12-10-82; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 97

[Docket No. 23456; Amdt. No. 1231]

### Air Traffic and General Operating Rules; Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or



changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination.*—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase.*—Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription.*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic

depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

#### List of Subjects in 14 CFR Part 97

Approaches, Standard instrument.

#### Adoption of the Amendment

#### PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

#### 1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

\* \* \* *Effective February 17, 1983*

Covington, LA—Richard Privette Sr, VOR/DME-A, Original  
Caldwell, TX—Caldwell Muni, VOR/DME-A, Original

\* \* \* *Effective January 20, 1983*

Corona, CA—Corona Muni, VOR-A, Amdt. 2  
Orlando, FL—Orlando Intl, VOR Rwy 18L, Amdt. 3  
Orlando, FL—Orlando Intl, VOR Rwy 18R, Amdt. 3  
Orlando, FL—Orlando Intl, VOR/DME Rwy 18L, Amdt. 4  
Orlando, FL—Orlando Intl, VOR/DME Rwy 18R, Amdt. 4  
Orlando, FL—Orlando Intl, VOR/DME Rwy 36L, Amdt. 4  
Orlando, FL—Orlando Intl, VOR/DME Rwy 36R, Amdt. 9  
Paducah, KY—Farrington Airpark, VOR/DME-B, Amdt. 2  
Mansfield, MA—Mansfield Muni, VOR-A, Amdt. 12  
Tecumseh, MI—Al Meyers, VOR-A, Amdt. 5  
Tupelo, MS—Industrial Airpark, VOR Rwy 11, Original  
Neosho, MO—Neosho Meml, VOR-A, Amdt. 6  
Cleveland, OH—Cuyahoga County, VOR Rwy 23, Amdt. 3  
Willoughby, OH—Lost Nation, VOR Rwy 5, Amdt. 2  
Willoughby, OH—Lost Nation, VOR Rwy 23, Amdt. 2  
Willoughby, OH—Lost Nation, VOR Rwy 27, Amdt. 2  
Orange, TX—Orange County, VOR/DME Rwy 21, Original  
Plainview, TX—Hale County, VOR Rwy 4, Amdt. 6

\* \* \* *Effective November 29, 1982*

San Juan, PR—Puerto Rico Intl, VOR Rwy 8/10, Amdt. 9  
San Juan, PR—Puerto Rico Intl, VOR Rwy 26, Amdt. 18

\* \* \* *Effective November 26, 1982*

Troy, AL—Troy Muni, VOR Rwy 7, Amdt. 2

\* \* \* *Effective November 23, 1982*

Mayaguez, PR—Mayaguez, VOR Rwy 9, Amdt. 8

\* \* \* *Effective November 22, 1982*

Ponce, PR—Mercedita, VOR Rwy 30, Amdt. 8

#### 2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

\* \* \* *Effective January 20, 1983*

Hancock, MI—Houghton County Memorial, LOC/DME (BC) Rwy 13, Amdt. 6  
Cleveland, OH—Cuyahoga County, LOC BC Rwy 5, Amdt. 5  
Sturgeon Bay, WI—Door County Cherryland, SDF Rwy 1, Original

#### 3. By amending § 97.27 NDB/ADF SIAPs identified as follows:



## \* \* \* Effective January 20, 1983

Hope, AR—Hope Municipal, NDB Rwy 16, Amdt. 2  
 Evansville, IN—Evansville Dress Regional, NDB Rwy 18, Original  
 Evansville, IN—Evansville Dress Regional, NDB Rwy 36, Original  
 Cherokee, IA—Cherokee Muni, NDB Rwy 36, Amdt. 2  
 Mansfield, MA—Mansfield Muni, NDB Rwy 32, Original  
 Tewksbury, MA—Tew-Mac, NDB-A, Amdt. 2  
 Hancock, MI—Houghton County Memorial, NDB Rwy 31, Amdt. 6  
 Traverse City, MI—Cherry Capital, NDB Rwy 28, Amdt. 5  
 Chillicothe, MO—Chillicothe Muni, NDB Rwy 14 Amdt. 5  
 Taos, NM—Taos Muni, NDB-A, Original  
 Taos, NM—Taos Muni, NDB-A, Amdt. 1, cancelled  
 Cleveland, OH—Cuyahoga County, NDB Rwy 23, Amdt. 3  
 Painesville, OH—Casement, NDB-B, Amdt. 7  
 Willoughby, OH—Lost Nation, NDB Rwy 9, Amdt. 7  
 Willoughby, OH—Lost Nation, NDB Rwy 27, Amdt. 10  
 Corsicana, TX—Corsicana Muni, NDB Rwy 14, Original  
 Woodbridge, VA—Woodbridge, NDB-A, Original  
 Sturgeon Bay, WI—Door County Cherryland, NDB Rwy 1, Amdt. 4

## \* \* \* Effective December 23, 1982

Butler, PA—Butler County, NDB-B, Amdt. 3

## \* \* \* Effective November 29, 1982

San Juan, PR—Puerto Rico Intl, NDB Rwy 8, Amdt. 7

## \* \* \* Effective November 26, 1982

Troy, AL—Troy Muni, NDB Rwy 7, Amdt. 4

## \* \* \* Effective November 22, 1982

Le Mars, IA—Le Mars Muni, NDB Rwy 18, Amdt. 6

## \* \* \* Effective November 19, 1982

Phillips, WI—Price County, NDB-A, Amdt. 2

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

## \* \* \* Effective January 20, 1983

Orlando, FL—Orlando Intl, ILS Rwy 18R, Amdt. 2  
 Orlando, FL—Orlando Intl, ILS Rwy 36R, Amdt. 4  
 Hancock, MI—Houghton County Memorial, ILS Rwy 31, Amdt. 7  
 Traverse City, MI—Cherry Capital, ILS Rwy 28, Amdt. 6  
 Cleveland, OH—Cuyahoga County, ILS Rwy 23, Amdt. 7

## \* \* \* Effective December 23, 1982

Norfolk, VA—Norfolk Intl, ILS Rwy 23, Amdt. 3

## \* \* \* Effective November 29, 1982

San Juan, PR—Puerto Rico Intl, ILS Rwy 8, Amdt. 14

## \* \* \* Effective November 26, 1982

Troy, AL—Troy Muni, ILS Rwy 7, Amdt. 4

## \* \* \* Effective November 25, 1982

Spokane, WA—Spokane Intl, ILS Rwy 3, Amdt. 2

5. By amending § 97.31 RADAR SIAPs identified as follows:

## \* \* \* Effective January 20, 1983

Orlando, FL—Orlando Intl, RADAR-1, Amdt. 3  
 Denver, CO—Arapahoe County, RADAR-1, Amdt. 9, cancelled  
 Denver, CO—Jeffco, RADAR-1, Amdt. 5 cancelled  
 St. Louis, MO—Lambert-St. Intl, RADAR-1, Amdt. 28, cancelled

## \* \* \* Effective November 26, 1982

Troy, AL—Troy Muni, RADAR-1, Amdt. 4

6. By amending § 97.33 RNAV SIAPs identified as follows:

## \* \* \* Effective January 20, 1983

Cleveland, OH—Cuyahoga County, RNAV Rwy 23, Amdt. 8  
 Neosho, MO—Neosho Meml, RNAV Rwy 19, Amdt. 3,  
 Davenport, IA—Davenport Muni, RNAV Rwy 15, Amdt. 4, cancelled  
 Davenport, IA—Davenport Muni, RNAV Rwy 33, Amdt. 4, cancelled

## \* \* \* Effective December 23, 1982

Butler, PA—Butler County, RNAV Rwy 26, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

**Note.**—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Note.**—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C., on December 3, 1982.

John M. Howard,

Manager, Aircraft Programs Division.

[FR Doc. 82-33709 Filed 12-10-82; 8:45 am]

BILLING CODE 4710-13-M

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 229, 239, 240, and 249

[Release Nos. 33-6441, 34-19290, 40-12865, File No. S7-939]

## Disclosure of Certain Relationships and Transactions Involving Management

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

**SUMMARY:** The Commission today announced the adoption of a new Regulation S-K item, Item 404, which provides for uniform disclosure of transactions and relationships involving management, and the adoption of certain conforming rule, form and schedule amendments. These actions are being taken as part of the Commission's Proxy Review Program, which includes a comprehensive reexamination of the disclosure requirements and procedural provisions relating to the solicitation of proxies.

**DATES:** Effective date: Item 404 and the conforming amendments are effective for all documents filed on or after July 1, 1983. Registrants may comply with these provisions after publication in the **Federal Register**. If a registrant elects to comply with these provisions prior to July 1, 1983, it must comply with all applicable provisions upon the election to do so and in any subsequent filings.

## FOR FURTHER INFORMATION CONTACT:

Prior to the effective date, contact Susan P. Davis or Robert B. Pincus, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. After the effective date, contact John J. Gorman, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

## SUPPLEMENTARY INFORMATION: The

Securities and Exchange Commission today announced the adoption of amendments to Regulation S-K (17 CFR Part 229), Forms S-1 (17 CFR 239.11) and S-11 (17 CFR 239.18) under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq. (1976 and Supp. IV 1980)), and Form 10 (17 CFR 249.210), Form 10-K (17 CFR 249.310), Schedule 14A (17 CFR 240.14a-101) and Schedule 14B (17 CFR 240.14a-102) under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78 et seq. (1976 and Supp. IV 1980)). These



amendments include: (1) Adoption of a new Item 404 of Regulation S-K (17 CFR 229.404) containing uniform disclosure requirements for transactions and relationships involving management in Securities Act and Exchange Act registration statements, periodic reports and proxy statements; (2) amendments to Item 401 of Regulation S-K (17 CFR 229.401) concerning disclosure of the business experience of executive officers and directors; (3) amendments to Item 402 of Regulation S-K (17 CFR 229.402) rescinding certain disclosure requirements that have been incorporated into new Item 404 relating to transactions with management, indebtedness of management, and transactions with promoters, and rescinding the disclosure requirements relating to transactions with pension plans; (4) amendments to Item 403 of Regulation S-K (17 CFR 229.403) clarifying beneficial ownership disclosure; (5) amendments to Forms S-1, S-11, 10 and 10-K and Schedules 14A and 14B requiring the disclosure called for by new Item 404; and (6) amendments to Item 6(b) of Schedule 14A rescinding certain disclosure requirements concerning relationships of directors, some of which are proposed to be incorporated into new Item 404.

The amendments adopted today relate, for the most part, to proposals that were published for comment in July 1982.<sup>1</sup> The comments received on the proposals generally were favorable. Several changes have been made in the proposals in response to comments, including a change in the class of relatives of certain persons connected with management whose transactions and indebtedness may be required to be disclosed.

This release focuses primarily on the changes made from the proposals and the basis for such revisions. As background for this discussion, the release briefly recounts the history of the development of proposed Item 404 and the comments received in response to the proposed new Item. Readers are directed to the text of the amendments and to the Proposing Release for a more complete understanding of the amendments.

## I. Background

Item 404, "Certain relationships and related transactions," and the related coordinating amendments were proposed for comment in July 1982, as

the Commission's first rulemaking initiatives under its comprehensive review of the rules and regulations applicable to the solicitation of proxies. The proposed Item was based primarily on the two existing disclosure requirements that relate to transactions involving the registrant and persons connected with management: Item 402(f) of Regulation S-K, the provisions of which were adopted in 1942 to elicit information regarding certain transactions involving management;<sup>2</sup> and Item 6(b) of Schedule 14A, which was adopted in 1978<sup>3</sup> to elicit disclosure regarding important relationships between directors or nominees for director and significant customers, suppliers or creditors of the registrant.

The development of a uniform disclosure item based on Items 402(f) and 6(b) originally was suggested in a release published in February 1981 proposing amendments to simplify reporting under Item 6(b) (the "February 1981 Release").<sup>4</sup> In that release, the Commission expressed concern that the existence of two disclosure items which, although serving different purposes, both required the registrant to review transactions involving management had led to confusion, overlapping review of information and duplicative disclosure. Accordingly, it included a specific inquiry as to the desirability of combining Items 402(f) and 6(b).

In response to this specific inquiry, commentators expressed a great deal of interest in the development of a uniform item.<sup>5</sup> Accordingly, the Commission began its Proxy Review Program with a review of Items 402(f) and 6(b) in order to extract the basic information about transactions and relationships relevant to both investment and voting decisions.

The Commission's review of this area resulted in the proposal of a new Item 404 of Regulation S-K that would elicit uniform disclosure of transactions and relationships in proxy statements and, where applicable, in Securities Act and Exchange Act registration statements and reports. Proposed Item 404 was divided into four sections. Proposed paragraph (a) contained requirements derived from Item 402 relating to disclosure of transactions with management. Proposed paragraph (b)

set forth disclosure requirements derived from Item 6(b), pertaining to relationships between directors or nominees of the registrant and significant suppliers, customers and creditors, including law and investment banking firms providing services to the registrant. The Commission also proposed to include in Item 404 other requirements from Item 402, relating to disclosure of management indebtedness and transactions with promoters, setting forth those requirements as paragraphs (c) and (d), respectively.

## II. Overview of Comments

The Commission's proposed Item 404 and related amendments generated a substantial amount of commentary.<sup>6</sup> Most of the commentators commended the Commission's efforts to simplify disclosure and reduce compliance burdens on registrants without sacrificing investor protection. Additionally, they overwhelmingly supported the incorporation of all the disclosure requirements relating to transactions and relationships involving management into one item and expressed the view that these proposals represented a step in the right direction.

Many of the commentators also suggested ways in which they believed the proposals should be changed. The specific comments and suggestions focused primarily on three areas: (1) The class of relatives covered by Item 404; (2) the specific inquiry concerning limiting disclosure of transactions and indebtedness, in the case of officers, to "executive" officers; and (3) directors' or nominees' relationships with law and investment banking firms. Several of the specific comments and suggestions are reflected in changes to Item 404 as adopted. These comments, as well as others not reflected in Item 404, are discussed below.

## III. Discussion of Item 404

### A. Transactions With Management and Others

Paragraph (a) of Item 404, which sets forth the disclosure requirements with respect to transactions in which certain specified persons connected with the registrant have a direct or indirect material interest, is derived from Item 402(f). The Commission has determined to adopt Item 404(a) with several modifications.

<sup>6</sup>Ninety-nine letter of comment were received in response to the proposals. A copy of the highlight of comments, as well as the letters of comment, are available for public inspection and copying at the Commission's Public Reference Room. (See File No. S7-939.)

<sup>1</sup>Release No. 33-8416 (July 6, 1982) (47 FR 31394) (the "Proposing Release"). The amendments adopted today also include certain proposals regarding beneficial ownership that were published for comment in February 1981 (Release No. 34-17517 (February 5, 1981) (46 FR 12011)).

<sup>2</sup>Release No. 34-3347 (December 18, 1942) (7 FR 10653).

<sup>3</sup>Release No. 34-15384 (December 6, 1978) (43 FR 58552).

<sup>4</sup>See footnote 1, *supra*.

<sup>5</sup>See the comment letters in response to the February 1981 Release. A copy of the highlight of comments, as well as the letters of comment, are available for public inspection and copying at the Commission's Public Reference Room. (See File No. S7-871.)



First, as proposed, Item 404(a) would have required disclosure of transactions involving more than \$50,000 in which certain specified persons have a material interest. In response to comments indicating that the threshold was too low, and for purposes of consistency with certain other recent rulemaking initiatives,<sup>7</sup> the Commission is raising such threshold to \$60,000.<sup>8</sup>

Second, Proposed Item 404(a)(1) would have required disclosure of transactions involving the registrant and any of its officers. The Commission solicited comment, however, as to whether transactions of only executive officers<sup>9</sup> rather than all officers should be required to be disclosed. In response to this inquiry, the commentators overwhelmingly advocated limiting such disclosure to executive officers, because, in their view, executive officers are the persons who are in a position to commit the registrant to the types of transactions meant to be disclosed. The Commission agrees and has modified Item 404(a)(1) accordingly.<sup>10</sup>

Third, proposed Item 404(a) would have required disclosure of certain transactions involving relatives of any of the persons named in paragraph (a) (1) through (3), specifically any director or officer of the registrant, nominee for director or five percent owner of a class of the registrant's securities (hereinafter all such persons are referred to as "primary reporting persons") who are "no more remote than first cousin." The class of relatives covered, as proposed, was broader than the class of relatives covered by Item 402(f)<sup>11</sup> because certain relatives may be able to benefit personally from transactions with the registrant, even though they do not live

in the same household as the primary reporting person.

This proposal was subjected to substantial criticism. Commentators stated that the proposal would impose not only a heavy but also an impracticable compliance burden on directors, officers and five percent owners. Such persons would be required to ascertain the business activities of numerous relatives, including cousins by marriage, great aunts and uncles and grandnieces and nephews in order to generate the required information. Furthermore, commentators contended that disclosure of transactions involving such distant relatives would not provide meaningful disclosure to security holders.

In view of these comments, the Commission has reexamined this area and determined to modify its proposal concerning the class of relatives whose transactions with the registrant are required to be disclosed. Item 404(a)(4), as revised, covers transactions only with "members of the immediate family" of the primary reporting persons. A new Instruction 2 to Item 404(a) had been added to define immediate family as a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, and brothers and sisters-in-law.<sup>12</sup> This revision will ensure that adequate disclosure is made of those transactions in which conflicts of interest are most likely to exist without imposing undue burdens upon registrants.<sup>13</sup>

Finally, the Commission is reorganizing the instructions to Item 404(a), as suggested by one commentator, to place them in a more practicable order. In addition, the Commission is retaining the portion of Instruction 8 to Item 402(f), relating to the materiality of certain interests, that it had proposed to delete when including that Instruction under Item 404. It is being included as part of Instruction 1 to Item 404(a).

<sup>12</sup> The same revision also is being made to Item 404(c)(3) with respect to the class of relatives of primary reporting persons whose indebtedness is required to be disclosed. A new Instruction 1 has been added to Item 404(c) indicating that the members of a person's immediate family means the same persons as specified in Instruction 2 to Item 404(a).

<sup>13</sup> In this regard, several commentators contended that information regarding transactions with certain relatives of a primary reporting person may not always be available to the registrant. The Commission believes, however, that its rules regarding the unavailability of information adequately address this issue. See Rule 409 under the Securities Act (17 CFR 230.409) and Rules 12b-21 (17 CFR 240.12b-21) and 14a-5(b) (17 CFR 240.14a-5(b)) under the Exchange Act.

## B. Certain Business Relationships

Paragraph (b) of Item 404 is derived from the disclosure requirements of Items 6(b) (3), (4), (5) and (7) of Schedule 14A regarding relationships between directors and nominees of the registrant and significant customers, suppliers and creditors of the registrant. In proposing Item 404(b), the Commission attempted to streamline significantly the disclosure requirements regarding relationships in view of comments received on the February 1981 Release to the effect that these requirements place heavy compliance burdens on registrants without always providing material information to security holders.

The vast majority of commentators were supportive of the Commission's efforts to streamline and improve disclosure of relationships, and the Commission has determined to adopt Item 404(b) substantially as proposed, with revisions made for purposes of clarification and to conform the ownership threshold for disclosure of relationships to that contained in Item 404(a). First, Item 404(b) is revised to make clear that a directors' relationship with significant customers, suppliers and creditors is required to be disclosed if it existed at any time during the past fiscal year. Second, Item 404(b) is modified to make clear that the registrant's fiscal year should be used when computing payments to or from the registrant, while the other entity's fiscal year should be used in computing payments to or from such other entity.

The consolidation of the requirements of Items 6(b) and 402(f) necessitated the addition of a new instruction to Item 404(b). New Instruction 4, consistent with existing requirements permits the omission of the information called for by Item 404(b) with respect to any director who is no longer a director at the time of filing the registration statement or report containing such disclosure, or, in the case of a proxy or information statement, will no longer be a director after the meeting of security holders to which the statement relates.<sup>14</sup>

In addition, the Commission is adopting as proposed paragraphs (b) (4) and (5) regarding disclosure of relationships with law and investment banking firms. Pursuant to existing Items 6(b) (4) and (5), both the existence of, and the dollar amount involved in, any relationship between a director or nominee and a law or investment banking firm is required to be disclosed. The Commission proposed to permit the omission of the dollar amounts involved

<sup>14</sup> The preamble to Item 6 of Schedule 14A is revised to reflect this change.

<sup>7</sup> This action is consistent with amendments adopted recently to various Securities Act and Exchange Act rules to raise the dollar limits contained therein. (Release No. 33-6414 (June 29, 1982) (47 FR 29651)).

<sup>8</sup> This revision is also being made to the threshold in Item 404(c).

<sup>9</sup> Pursuant to Rule 405 under the Securities Act (17 CFR 230.405) and Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7), the term "executive officer," "when used in reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant."

<sup>10</sup> This revision also is being made to paragraphs 404 (b) and (c), with respect to the class of officers covered by those items.

<sup>11</sup> The class of relatives covered by Item 402(f) consists of any relative of a primary reporting person who lives in the same household as such person, or who is a director or officer of any parent or subsidiary of the registrant.



where such amounts do not exceed five percent of the law firm's gross revenues or the investment banking firm's consolidated gross revenues, but proposed to continue to require disclosure of the existence of such relationships regardless of the dollar amount involved. Additionally, the Commission requested specific comment as to whether relationships with law and investment banking firms should be treated the same as relationships with other suppliers of services by requiring disclosure of the existence of such relationships only if the amount of business between the law or investment banking firm and the registrant exceeds five percent of the firm's or registrant's gross revenues. While many of the commentators responding to this inquiry contended that relationships with law and investment banking firms should be treated the same as relationships with other suppliers of services, some commentators expressed the opinion that such relationships are different from other suppliers of services and should be required to be disclosed regardless of the dollar amount involved.

The Commission also is adopting the *de minimis* subsidiary exclusions in Instructions 2.C. and 3.C. to Item 404(b) as proposed. Those Instructions, which generally were supported by commentators, permit registrants to exclude payments made or received by, or indebtedness incurred by, subsidiaries other than significant subsidiaries when computing the aggregate amount of payments for services or property or aggregate indebtedness. This exclusion is available only if all such *de minimis* subsidiaries engaged in transactions when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary. Some commentators suggested eliminating the aggregation proviso, but the Commission believes that when *de minimis* subsidiaries, in the aggregate, represent a material part of the registrant's business, such transactions are important to investors.

Finally, the Commission has raised the ownership threshold for disclosure of business relationships between the registrant and significant customers, suppliers or creditors in which a director has an equity interest from five percent, as proposed, to ten percent. By conforming the ownership threshold in paragraph (b) to that in paragraph (a) compliance burdens should be reduced.

#### C. Indebtedness of Management

Paragraph (c) of Item 404 is derived from the disclosure requirements of Item

402(e), with modifications in the following areas: (1) The class of relatives covered; (2) the officers covered; (3) nonperforming loans; and (4) the threshold for disclosure. The Commission proposed to modify the class of relatives covered to that proposed in Item 404(a) and to require disclosure of nonperforming loans. In addition, a specific inquiry was made as to whether disclosure of loans, in the case of officers, should be limited to executive officers. As adopted, Item 404(c) covers the immediate family of primary reporting persons, as specified in Item 404(a), and limits disclosure to executive officers.<sup>15</sup>

The Commission also is adopting the disclosure requirements concerning nonperforming loans in Instruction 3 to Item 404(c) (proposed as Instruction 2). That Instruction exempts banks, savings and loan associations and broker-dealers extending credit under Federal Reserve Regulation T<sup>16</sup> from having to describe loans made in the ordinary course of business on substantially the same terms as those for comparable transactions that do not involve more than the normal risk of collectability. As adopted, the Instruction limits the exemption to loans that are not nonperforming. The Commission, however, has removed the definition of "nonperforming loans" in Instruction 3 because it is set forth in Industry Guide 3, Statistical disclosure by bank holding companies.

Finally, the Commission has proposed to delete the exclusion for transactions in the ordinary course of business in Instruction 2 to Item 402(e) because it believed it was duplicative of other exclusions. Commentators contended, however, that the exclusion was not redundant and was necessary to cover certain relocation expenses. In light of these comments, the Commission has determined to retain the exclusion.

#### D. Transactions With Promoters

Paragraph (d) of Item 404 is derived from the disclosure requirements of Item 402(h) and reflects the Commission's belief that the disclosure of transactions with promoters is more appropriately included with other provisions concerning potential conflicts of interest in Item 404 than in an item dealing with remuneration. No comments were directed to this provision, and the Commission has adopted it as proposed.

#### E. Other Proposed Revisions

1. *Disclosure of transactions with pension plans.* The Commission

<sup>15</sup> See text accompanying notes 10 and 12, *supra*.

<sup>16</sup> 12 CFR Part 220.

proposed to rescind current Item 402(g) of Regulation S-K, relating to disclosure of transactions with pension or similar plans, because the Item appeared unnecessary in light of the extent to which affiliated transactions by pension plans generally are regulated under the Employee Retirement Security Act of 1974.<sup>17</sup> The Commission requested specific comment, however, as to whether such action would eliminate meaningful disclosure. Most of the commentators responding to this inquiry stated that rescission of Item 402(g) would not eliminate meaningful disclosure. In light of these comments and its own experience, the Commission has determined to rescind Item 402(g).

2. *Inclusion of Schedule 1 to Article 9 of Regulation S-X in proxy statements.* Concomitantly with the proposal of Item 404, the Commission proposed amendments to Article 9 of Regulation S-X<sup>18</sup> to rescind Schedule 1, which requires disclosure of loans from the registrant to its executive officers and principal shareholders.<sup>19</sup> The Commission solicited comment as to whether that Schedule, or the disclosure elicited by it, should be included in proxy statements. The commentators responding to that request unanimously opposed the inclusion of such information in proxy statements. They opined that the need for disclosure in this area, to the extent it ever existed, was alleviated substantially by the passage of the Financial Institutions Regulatory Interest Rate Control Act of 1978.<sup>20</sup> In light of these comments, the Commission has determined not to require such information in proxy statements.

#### IV. Beneficial Ownership

The Commission is adopting two amendments to Item 403 of Regulation S-K that were proposed in the February 1981 Release.<sup>21</sup> In that Release, the

<sup>17</sup> 29 U.S.C. 1001 et seq.

<sup>18</sup> 17 CFR Part 210.

<sup>19</sup> Release No. 33-6417 (July 9, 1982) (47 FR 32158).

<sup>20</sup> Pub. L. No. 95-630, 92 Stat. 3713 (1978).

<sup>21</sup> The February 1981 Release also contained a number of other proposals that are not being acted on today. The status of those proposals is as follows: (1) Proposed amendments to Item 6(d) of Schedule 14A regarding full board consideration of shareholder nominations were repropounded in Release No. 33-6338 (August 6, 1981) (46 FR 42042) and will be considered as part of a later proxy program project; (2) proposed amendments to Item 22 of Schedule 14A regarding disclosure of the vote required for election of directors were repropounded in Release No. 33-6338 and also will be considered as part of a later proxy program project; (3) proposed amendments to Item 9 of Schedule 14A regarding clarification of remuneration disclosure requirements were repropounded in Release 33-6338 and will be reconsidered in connection with the forthcoming proposed revisions to Item 402 of



Commission announced its intention to act upon certain amendments to Item 403 relating to the clarification of beneficial ownership disclosure at the time final action was taken with respect to Item 404. First, the Commission proposed to amend instruction 5 to Item 403 to direct registrants not to count shares more than once when computing, pursuant to paragraph (b) of Item 403, the aggregate number of shares owned by directors and officers as a group. In addition, the Commission proposed to amend Instruction 1 to permit registrants to omit precise ownership percentages when the percentage for a particular individual, or all officers and directors as a group, represents less than one percent of the subject class of securities, provided that the registrant discloses by footnote or similar means the fact that the ownership figure is less than one percent. The majority of the commentators supported these proposals and the Commission has determined to adopt them as proposed.

#### V. Coordinating Amendments to Forms and Schedules

In coordination with the adoption of uniform Regulation S-K Item 404, the Commission is amending registration Forms S-1 and S-11 under the Securities Act, and Forms 10 and 10-K and Schedules 14A and 14C under the Exchange Act to require the information called for by Item 404. The Commission also is making certain renumbering changes necessitated by the addition of Item 404 to such forms and schedules. Finally, the Commission is amending Item 401(e) of Regulation S-K, as proposed, to require that registrants indicate, in identifying any corporations or other organizations by which the enumerated persons have been employed during the past five years, whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant.

#### VI. Statutory Authority and Findings

The Commission hereby adopts Item 404 of Regulation S-K and other conforming amendments pursuant to its statutory authority in Sections 6, 7, 8, 10 and 19(a) of the Securities Act and Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act. As required by Section 23(a) of the Exchange Act, the

Commission has considered the impact that these rulemaking actions would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### List of Subjects in 17 CFR 229, 239, 240, and 249

Reporting requirements and securities.

#### VII. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

#### PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. By revising paragraph (e)(1) of § 229.401 to read as follows:

##### § 229.401 (Item 401) Directors and executive officers.

(e) *Business experience.* (1) *Background.* Briefly describe the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of Item 401, including: Each person's principal occupations and employment during the past five years; the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. When an executive officer or person named in response to paragraph (c) of Item 401 has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

2. By amending § 229.402 to change its title to Management remuneration, to remove paragraphs (e), (f), (g) and (h), to redesignate paragraph (i) as paragraph (e), and to revise Instruction 5 to paragraph (a) as follows:

##### § 229.402 (Item 402) Management remuneration.

(a) *Remuneration.* \* \* \*

#### Instructions to Paragraph (a) of Item 402.

5. *Transactions with third parties.* \* \* \* Other transactions between the registrant and third parties in which persons specified in paragraph (a) of Item 402 have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interests of management and others in certain transactions, particularly paragraph (a) of Item 404. Paragraph (a) of Item 402 does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions shall be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to paragraph (a) of Item 402.

3. By amending § 229.403 to revise Instructions 1 and 5 as follows:

##### § 229.403 (Item 403) Security ownership of certain beneficial owners and management.

*Instructions to Item 403.* 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to Rule 13d-3(d)(1) under the Exchange Act 17 (CFR 240.13d-3(d)(1)). For purposes of paragraph (b), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the registrant as a group, does not exceed one percent of the class so owned, the registrant may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph (b), in computing the aggregate number of shares owned by directors and officers of the registrant as a group, the same shares shall not be counted more than once.

4. By adding § 229.404 to read as follows:

##### § 229.404 (Item 404) Certain relationships and related transactions.

(a) *Transactions with management and others.* Describe briefly any transaction, or series of similar transactions, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which the amount involved exceeds \$60,000 and in which any of the following persons had, or will have, a direct or indirect material interest, naming such person and indicating the person's relationship to the registrant, the nature of such

Regulation S-K: (4) proposed clarifying amendments to Item 402(d)(iv) were repropounded in Release No. 33-6332 (August 6, 1981) (46 FR 41925) and also will be considered as part of the proposed revisions to Item 402; and (5) proposed amendments to Rule 14a-8 under the Exchange Act regarding shareholder proposals were replaced by new proposals in this area. See Release No. 34-19135 (October 14, 1982) (47 FR 47420).



person's interest in the transaction(s), the amount of such transaction(s) and, where practicable, the amount of such person's interest in the transaction(s):

(1) Any director or executive officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of the registrant's voting securities; and

(4) Any member of the immediate family of any of the foregoing persons.

*Instructions to Paragraph (a) of Item 404.* 1. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transactions are among the factors to be considered in determining the significance of the information to investors.

2. For purposes of paragraph (a), a person's immediate family shall include such person's spouse; parents; children; siblings; mothers and fathers-in-law; sons and daughters-in-law; and brothers and sisters-in-law.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic installments in the case of any lease or other agreement providing for periodic payments or installments.

4. The amount of the interest of any person specified in paragraphs (a) (1) through (4) shall be computed without regard to the amount of the profit or loss involved in the transaction(s).

5. In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

6. Information shall be furnished in answer to paragraph (a) with respect to transactions that involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the persons specified in paragraphs (a) (1) through (4) for services in any capacity unless the interest of such person arises solely from the ownership individually and in the aggregate of less than ten percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

7. No information need be given in answer to paragraph (a) as to any transactions where:

A. The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

C. The interest of the person specified in paragraphs (a) (1) through (4) arises solely from the ownership of securities of the registrant and such person receives no extra or special benefit not shared on a pro rata basis.

8. Paragraph (a) requires disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. Such an interest, however, shall not be deemed "material" within the meaning of paragraph (a) where:

A. The interest arises only: (i) From such person's position as a director of another corporation or organization which is a party to the transaction; or (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (a) (1) through (4), in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership;

B. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in paragraphs (a) (1) through (4) have an interest of less than ten percent; or

C. The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in another person that is a party to the transaction with the registrant or any of its subsidiaries, and the transaction is not material to such other person.

9. There may be situations where, although these instructions do not expressly authorize nondisclosure, the interest of a person specified in paragraphs (a) (1) through (4) in a particular transaction or series of transactions is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph.

(b) *Certain business relationships.* Describe any of the following relationships regarding directors or nominees for director that exist, or have existed during the registrant's last fiscal year, indicating the identity of the entity with which the registrant has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the registrant and the amount of the business done between the registrant and the entity during the registrant's last full fiscal year or proposed to be done during the registrant's current fiscal year:

(1) If the nominee or director is, or during the last fiscal year has been, an executive officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity that has made during the registrant's last full fiscal year, or proposes to make during the registrant's current fiscal year, payments to the registrant or its subsidiaries for property or services in excess of five percent of (i) the registrant's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is, or during the last fiscal year has been, an executive officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the registrant or its subsidiaries has made during the registrant's last full fiscal year, or proposes to make during the registrant's current fiscal year, payments for property or services in excess of five percent of (i) the registrant's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is, or during the last fiscal year has been, an executive officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the registrant or its subsidiaries was indebted at the end of the registrant's last full fiscal year in an aggregate amount in excess of five percent of the registrant's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm that the issuer has retained during the last fiscal year or proposes to retain during the current fiscal year; *Provided, however,* that the dollar amount of fees paid to a law firm by the registrant need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for that firm's last full fiscal year;

(5) If the nominee or director is, or during the last fiscal year has been, a partner or executive officer of any investment banking firm that has performed services for the registrant, other than as a participating underwriter in a syndicate, during the last fiscal year or that the registrant proposes to have perform services during the current year; *Provided, however,* That the dollar



amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for that firm's last full fiscal year; or

(6) Any other relationships that the registrant is aware of between the nominee or director and the registrant that are substantially similar in nature and scope to those relationships listed in paragraphs (b) (1) through (5).

*Instructions to Paragraph (b) of Item 404. 1.* In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity, other than the registrant, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. Payments that arise solely from the ownership of securities of the registrant and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in Rule 1-02(v) of Regulation S-X (§ 210.1-02(v) of this chapter), provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1-02(v).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms; or

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in Rule 1-02(v) of Regulation S-X (§ 210.1-02(v) of this chapter), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1-02(v).

4. No information called for by paragraph (b) need be given respecting any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(c) *Indebtedness of management.* If any of the following persons has been indebted to the registrant or its subsidiaries at any time since the

beginning of the registrant's last fiscal year in an amount in excess of \$60,000, indicate the name of such person, the nature of the person's relationship by reason of which such person's indebtedness is required to be described, the largest aggregate amount of indebtedness outstanding at any time during such period, the nature of the indebtedness and of the transaction in which it was incurred, the amount thereof outstanding as of the latest practicable date and the rate of interest paid or charged thereon:

(1) Any director or executive officer of the registrant;

(2) Any nominee for election as a director;

(3) Any member of the immediate family of any of the persons specified in paragraph (c) (1) or (2);

(4) Any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which any of the persons specified in paragraph (c) (1) or (2) is an executive officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities; and

(5) Any trust or other estate in which any of the persons specified in paragraph (c) (1) or (2) has a substantial beneficial interest or as to which such person serves as a trustee or in a similar capacity.

*Instructions to Paragraph (c), of Item 404. 1.* For purposes of paragraph (c), the members of a person's immediate family are those persons specified in Instruction 2 to Item 404(a).

2. Exclude from the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense payments and for other transactions in the ordinary course of business.

3. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR Part 220) and the loans are not nonperforming, disclosure may consist of a statement, if such is the case, that the loans to such persons (A) were made in the ordinary course of business, (B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (C) did not involve more than the normal risk of collectability or present other unfavorable features. See, Industry Guide 3, Statistical disclosure by bank holding companies.

4. If any indebtedness required to be described arose under Section 16(b) of the Exchange Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the registrant or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If, in the opinion of counsel, a question reasonably

exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transactions, including the prices and number of shares involved.

(d) *Transactions with promoters.* Registrants that have been organized within the past five years and that are filing a registration statement on Form S-1 under the Securities Act (§ 239.11 of this chapter) or on Form 10 under the Exchange Act (§ 239.210 of this chapter) shall:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(2) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

*Instructions to Item 404. 1.* No information need be given in response to any paragraph of Item 404 as to any remuneration or other transaction reported in response to any other paragraph of Item 404 or to Item 402 of Regulation S-K (§ 229.402 of this chapter) or as to any remuneration with respect to which information may be omitted pursuant to Item 402.

2. If the information called for by Item 404 is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant's last fiscal year.

3. A non-Canadian foreign private issuer eligible to use Form 20-F (§ 249.220f of this chapter) may respond to Item 404 only to the extent that the registrant discloses to its security holders or otherwise makes public the information specified in that Item.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. By amending Item 11 of Form S-1 in § 239.11 to revise paragraphs (k) and (l) and to add a new paragraph (m) as follows (From S-1 does not appear in the Code of Federal Regulations):

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

\* \* \* \* \*



**Item 11. Information With Respect to the Registrant—**

(k) Information required by Item 402 of Regulation S-K (§ 229.402 of this chapter), management remuneration;

(l) Information required by Item 403 of Regulation S-K (§ 229.403 of this chapter), security ownership of certain beneficial owners and management; and

(m) Information required by Item 404 of Regulation S-K (§ 229.404 of this chapter), certain relationships and related transactions.

6. By amending Form S-11 in § 239.18 to change the title of Item 22 to Management Remuneration, to renumber Items 23-35 as Items 24-36 and to add a new Item 23 to read as follows (Form S-11 does not appear in the Code of Federal Regulations):

**§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.**

Item 23. *Certain Relationships and Related Transactions.* Furnish the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter). If the information prescribed by Instruction 5 to Item 404(a) is included and the assets have been acquired by the seller within five years prior to the transaction, disclose the aggregate depreciation claimed by the seller for federal income tax purposes.

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

7. By revising Item 6 of § 240.14a-101 to read as follows:

**§ 240.14a-101 Schedule 14A. Information required in proxy statement.**

Item 6. *Directors and executive officers.* If action is to be taken with respect to the election of directors, furnish the following information in tabular form to the extent practicable. If, however, the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation.

(b)(1) Furnish the information required by Item 404 (a) and (c) of Regulation S-K (§ 229.404 of this chapter).

(2) With respect to registrants other than investment companies registered under the Investment Company Act of 1940, furnish the information required by Item 404(b) of Regulation S-K (§ 229.404(b) of this chapter).

8. By revising paragraph (b) of Item 4 of § 240.14a-102 to read as follows:

**§ 240.14a-102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a-11(c) (Rule 14a-11(c)).**

**Item 4. Further matters.**

(b) Furnish for yourself and your associates the information required by Item 404(a) of Regulation S-K (§ 229.404(a) of this chapter).

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

9. By amending Form 10 in § 249.210 to change the title of Item 6 to Management Remuneration, to renumber Items 7-14 as Items 8-15 and to add a new Item 7 to read as follows (Form 10 does not appear in the Code of Federal Regulations):

**§ 249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.**

Item 7. *Certain Relationships and Related Transactions.* Furnish the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter).

10. By amending Form 10-K in § 249.310 to revise General Instructions G (3) and (4), I and J(1)(c) and (2)(c), to change the title of Item 11 to Management Remuneration, to renumber Item 13 as Item 14 and to add a new Item 13 as follows (Form 10-K does not appear in the Code of Federal Regulations):

**§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.**

**General Instructions**

**G. Information to be Incorporated by Reference.**

(3) The information required by Part III (Items 10, 11, 12 and 13) shall be incorporated by reference from the registrant's definitive proxy statement (filed or to be filed pursuant to Regulation 14A) or definitive information statement (filed or to be filed pursuant to Regulation 14C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. However, if such definitive proxy or information statement is not filed with the Commission in the 120-day period, the

Items comprising the Part III information must be filed as part of the Form 10-K, or as an amendment to the Form 10-K under cover of Form 8, not later than the end of the 120-day period. It should be noted that the information regarding executive officers required by Item 401 of Regulation S-K (§ 229.401 of this chapter) may be included in Part I of Form 10-K under an appropriate caption. See Instruction 4 to Item 401(b) of Regulation S-K (§ 229.401(b) of this chapter).

(4) \* \* \* When the registrant combines all of the information in Parts I and II of this Form (Items 1 through 9) by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form (Items 10 through 13) by incorporating by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding General Instruction C (1), this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this Form and the page and/or pages in the referenced materials where the corresponding information appears.

**I. Registrants filing on form S-18.**  
\* \* \* In lieu of complying with the disclosure requirements of Item 1, Business, Item 11, Management Remuneration and Item 13, Certain Relationships and Related Transactions.

**J. Omission of Information by Certain Wholly-Owned Subsidiaries.**

(1) Conditions for availability of the relief specified in paragraph (2) below.

(c) There is prominently set forth, on the cover page of the Form 10-K, a statement that the registrant meets the conditions set forth in General Instruction (J)(1)(a) and (b) of Form 10-K and is therefore filing this Form with the reduced disclosure format.

(2) Registrants meeting the conditions specified in paragraph (1) above are entitled to the following relief:

(c) Such registrants may omit the information called for by the following otherwise required Items: Item 4,



Submission of Matters to a Vote of Security Holders; Item 10, Directors and Executive Officers of the Registrant; Item 11, Management Remuneration; Item 12, Security Ownership of Certain Beneficial Owners and Management; and Item 13, Certain Relationships and Related Transactions.

Item 13. *Certain Relationships and Related Transactions.* Furnish the information required by Item 404 of Regulations S-K (§ 229.404 of this chapter).

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 76, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574, secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3-5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1994, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a))

By the Commission.

George A. Fitzsimmons,  
Secretary.

December 2, 1982.

[FR Doc. 82-33628 Filed 12-10-82 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

#### 24 CFR Part 15

[Docket No. R-82-1061]

### Production or Disclosure of Material or Information

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** HUD's regulations governing production or disclosure of material or information under the Freedom of Information Act (FOIA) currently provide that field counsel, prior to concurring in a denial of a FOIA request, must obtain the approval of the General Counsel. This final rule removes that provision because HUD no longer believes that headquarters approval of every field counsel concurrence is necessary.

**EFFECTIVE DATE:** Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**  
David White, Assistant General

Counsel, Office of General Counsel, Room 10252, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C., 20410. Telephone (202) 755-7137 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** 5 U.S.C. 552, the Freedom of Information Act (FOIA), directs each agency to establish procedures for the disclosure of information to the public. HUD's rules for the disclosure of information within its possession are found at 24 CFR Part 15.

In case of a FOIA request to a field office, 24 CFR 15.52 requires the appropriate official to obtain the concurrence of field counsel before denying the request. Field counsel, in turn, must seek approval of the denial decision from the General Counsel in Washington.

This final rule would make HUD procedures for the handling of FOIA requests more efficient by removing the requirement that field office denials of information requests be approved by the General Counsel in Washington.

The subject matter of this amendment relates to agency procedure and is therefore exempt from the notice and public comment requirements of Section 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, this amendment is being made by means of a final rule, without an opportunity for public comment, to become effective as provided above.

Pursuant to 24 CFR 50.30(c), this rule is exempt from the preparation of an Environmental Assessment because it relates to the Department's internal administrative procedures.

This rule does not constitute a "major rule" as that term is defined in Section (1)(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities since its effect

is limited to a detail of agency procedure.

This rule was not listed in the Department's Semi-annual Agenda of Regulations published on August 17, 1981 (46 FR 41708), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not affect any program included in the Catalogue of Federal Domestic Assistance Programs.

#### List of Subjects in 24 CFR Part 15

Classified information, Freedom of information.

### PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Accordingly, 24 CFR Part 15 is amended by revising § 15.52 to read as follows:

#### § 15.52 Authority to deny requests for records.

The officers and their designees described in the preceding § 15.51 may deny a request for a record. Any denial shall be made in writing, contain a simple statement of reasons for the denial, state that a review of the denial by the General Counsel may be requested, set forth the steps for obtaining that review in accordance with § 15.61, and shall be signed by the official responsible for such denial. Prior to a denial the officer or designee shall obtain the concurrence of appropriate field or headquarters counsel in the denial. Denial shall terminate the authority of the particular officer or designee to release or disclose the requested record, which thereafter may not be made available except with the express authorization of the General Counsel.

(5 U.S.C. 552; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: November 29, 1982.

John J. Knapp,  
General Counsel

[FR Doc. 82-33760 Filed 12-10-82; 8:45 am]

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## Government National Mortgage Association

### 24 CFR Part 300

[Docket No. R-82-1062]

### List of Attorneys-in-Fact

**AGENCY:** Government National Mortgage Association, Department of Housing and Urban Development.

**ACTION:** Final rule.